

NOT DESIGNATED FOR PUBLICATION

DIVISION III

CACR06-1358

May 23, 2007

BRADFORD DeWAYNE BAILEY
APPELLANT

APPEAL FROM THE HOT SPRING
COUNTY CIRCUIT COURT
[NO. CR-2005-321-1]

V.

HONORABLE CHRIS E WILLIAMS,
CIRCUIT JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant, Bradford DeWayne Bailey, appeals from his residential burglary conviction, arguing that the State failed to prove that his purpose in entering the residence was to commit a theft or other offense punishable by imprisonment. We conclude that there was substantial evidence of appellant's intent, and accordingly, we affirm.

Zola Brandon testified that she called 911 after she saw appellant outside her home and heard him attempting to enter the residence. Sergeant John Keding of the Hot Spring County Sheriff's Office testified that, when he arrived at the residence, he noticed that a screen had been removed from a window. He looked in the window and saw appellant in the kitchen putting canned beverages into a cooler on a counter top. Keding told appellant to back up to the window, but appellant refused to cooperate. Keding called for backup, and Chief Deputy

Lee Motes arrived at the scene within minutes.

Keding asked Motes to enter through the front door, and over the radio he asked the dispatcher to tell Brandon to unlock the front door. Brandon testified that, when she went to unlock the door, she saw appellant standing in the kitchen. Brandon observed that a pantry door had been opened and that on a counter top sat an ice chest and food items that had been in the pantry. Brandon testified that she did not open the pantry door or leave the ice chest and food on the counter top. She asserted that appellant put them there and that it appeared that appellant was getting food. Brandon also testified that appellant had entered the kitchen through the kitchen window.

Motes testified that, after Brandon opened the door, he entered the residence and ordered appellant to the ground. According to Keding, appellant ran to the back door. Motes testified that he “took” appellant to the ground. Brandon and Motes then arrested appellant.

Our criminal statutes provide that “[a] person commits residential burglary if he or she enters or remains unlawfully in a residential occupiable structure of another person with the purpose of committing in the residential occupiable structure any offense punishable by imprisonment.” Ark. Code Ann. § 5-39-201(a)(1) (Repl. 2006). As he did at trial, appellant argues that the evidence was insufficient to establish that his purpose was to commit a theft or other offense punishable by imprisonment. We disagree.

We will affirm a conviction if, viewing the evidence in the light most favorable to the State, there is substantial evidence to support the conviction. *Jimenez v. State*, 12 Ark. App.

315, 675 S.W.2d 853 (1984). In *Jimenez*, a police officer investigating a break-in found the defendant sitting in a corner in the living room. A window in the back door was broken; some dishes, glasses, and silverware had been wrapped in towels and placed in a large pail; and curtains were torn off the living room wall and used to wrap a staple gun and some other items. We concluded that this evidence was sufficient to support a finding that the defendant intended to commit a theft punishable by imprisonment, as the requisite intent could be inferred from the fact that items in the home had been gathered up, as if to be carried off, coupled with the homeowner's testimony that neither he nor his sister had moved the items to that location.

Similarly, appellant's intent to commit a theft can be inferred from appellant's removing the food and ice chest from the pantry and placing the food into the ice chest, as if to carry it off. We thus hold the evidence to be sufficient to support appellant's conviction for burglary.

Affirmed.

GLADWIN and ROBBINS, JJ., agree.